

TITLE 27 ENVIRONMENTAL PROTECTION

DIVISION 2. SOLID WASTE

SUBDIVISION 1. CONSOLIDATED REGULATIONS FOR TREATMENT, STORAGE, PROCESSING OR DISPOSAL OF SOLID WASTE

CHAPTER 6. FINANCIAL ASSURANCES AT SOLID WASTE FACILITIES AND AT WASTE MANAGEMENT UNITS FOR SOLID WASTE

SUBCHAPTER 1. DEFINITIONS FOR FINANCIAL ASSURANCE DEMONSTRATIONS AND REQUIREMENTS

§22200. CIWMB - Definitions

(g) ~~(Reserved)~~ "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of the fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions. Cash plus marketable securities form the numerator of the liquidity ratio.

(1) Cash and cash equivalents means bank deposits, very short-term debt securities, and money market funds.

(2) Marketable securities means interest or dividend bearing securities in the General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds and Internal Service Funds, as reported on the comprehensive annual financial report's (CAFR's) Combined Balance Sheet and that are expected to be held for less than one year.

(3) Excluded from this definition are accounts receivable, retirement assets, real property, fixed assets, and other non-current assets, as well as any assets (including cash) in Capital Projects Funds.

(h) "Comprehensive Annual Financial Report (CAFR)" means annual financial report prepared by local governments.

(i) "Cumulative capacity filled"

(j) "Current assets"

(k) "Current closure cost estimate"

(l) "Current liabilities"

(m) "Current postclosure cost estimate"

(n) "Debt service" means the amount of principal and interest due on a loan in the latest completed fiscal year. Annual debt service is the numerator of the debt service ratio. The debt service ratio provides an indicator of ability to meet financial obligations in a timely manner.

(1) Sum of amounts in any debt service category including bond principal, other debt principal, interest on bonds, interest on other debt in the General Fund, Special Revenue Funds, Debt Service Fund, and Capital Projects Funds.

(2) Debt service amounts are reported in the comprehensive annual financial report's (CAFR's) Combined Statement of Revenues, Expenditures and Changes in Fund Balances/Equity.

(3) Interest expense in Enterprise Funds and Internal Service Funds are reported on comprehensive annual financial report's (CAFR's) Combined Statement of Revenues, Expenses and Changes in Retained Earnings/Fund Balances.

(mo) "Enterprise fund"
(np) "Excess coverage"
(eq) "Federal entity"
(pr) "Financial means test"
(qs) "Financial reporting year"
(rt) "Fully funded"
(su) "Government securities"
(ty) "Guarantee"
(uw) "Guarantor"
(vx) "Insurance"
(wy) "Legal defense costs"
(xz) "Letter of credit"
(yaa) "Liabilities"
(zbb) "Minimum fund balance"
(aacc) "Mobile equipment"
(bbdd) "Net working capital"
(eeee) "Net worth"

(ff) "Operating deficit" means total expenditures minus total revenues.

(ddgg) "Parent corporation"
(eehh) (Reserved)
(ffii) "Pledge of revenue"
(ggjj) "Primary coverage"
(hhkk) "Property damage"
(iill) "Provider of financial assurance"
(jjmm) "Remaining cost estimate"
(kknn) "Remaining permitted capacity"
(lloo) "Substantial business relationship"
(mmp) "Surety bond"
(nnqq) "Tangible net worth"

(rr) "Total expenditures" means the sum of the six items listed in subsections (1) and (2) below.

(1) Items 1-3 reported on the comprehensive annual financial report's (CAFR's) Combined Statement of Revenues, Expenses and Changes in Fund Balances/Equity:

(A) Total Expenditures of the General Fund.

(B) Total Expenditures of Special Revenue Funds.

(C) Total Expenditures of the Debt Service Fund.

(2) Items 4-6 reported on the comprehensive annual financial report's (CAFR's) Combined Statement of Revenues, Expenses and Changes in Retained Earnings/Fund Balances:

(A) Total Operating Expenses Before Depreciation of Enterprise Funds

(B) If negative, Total Non-Operating Revenues (Net) of Enterprise Funds.

(C) If negative, Total Non-Operating Revenues (Net) of Internal Service Funds.

(3) Total expenditures is used in the liquidity and debt service ratios, and operating deficit limit.

(4) Include routine capital outlays that are accounted for in the General Fund, e.g. outlays for police vehicles, copy equipment; any capital outlays that are funded on a "pay-as-you-go" basis.

(5) Exclude non-routine capital outlays, which are generally accounted for in Capital Projects Funds.

(sss) "Total permitted capacity"

(tt) "Total revenues" means the sum of the seven items listed in subsections (1) and (2) below, and is used in the calculation of costs which can be assured by the local government financial test.

(1) Items 1-4 reported on the comprehensive annual financial report's (CAFR's) Combined Statement of Revenues, Expenses and Changes in Fund Balances/Equity:

(A) Total Revenues of the General Fund.

(B) Total Revenues of Special Revenue Funds.

(C) Total Revenues of the Debt Service Fund.

(D) Total Revenues of Capital Projects Funds.

(2) Items 5-7 reported on the comprehensive annual financial report's (CAFR's) Combined Statement of Revenues, Expenses and Changes in Retained Earnings/Fund Balances:

(A) Total Operating Revenues of Enterprise Funds.

(B) If positive, Total Non-Operating Revenues (Net) of Enterprise Funds.

(C) If positive, Total Non-Operating Revenues (Net) of Internal Service Funds.

(3) Total revenues is used in calculation of operating deficit and the limit on costs.

(ppuu) "Trust fund"

NOTE: Authority cited: Sections 40502, 43040, and 43601.5, Public Resources Code. References: Sections 43040, 43103, 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.

SUBCHAPTER 3. ALLOWABLE MECHANISMS

ARTICLE 1. CIWMB - GENERAL REQUIREMENTS FOR MECHANISMS

\$22228. CIWMB - Acceptable Mechanisms and Combination of Mechanisms

(a)

(10) ~~\$22249[Reserved]~~, Local Government Financial Test;

(11) \$22249.5, Local Government Guarantee;

~~(1112)~~ \$22250, Federal Certification;

~~(1213)~~ \$22251, Liability Insurance;

~~(1314)~~ \$22252, Self-Insurance and Risk Management;

~~(1415)~~ \$22253, Insurance and Environmental Fund; and

~~(1516)~~ \$22254, State Approved Mechanism.

(e) The enterprise fund, government securities, local government financial test, and self-insurance and risk management mechanisms are acceptable only for disposal facilities operated by government agencies. A local government guarantee and a pledge of revenue may be used by an operator or provider of financial assurances that is a government agency for a disposal facility to demonstrate financial responsibility for postclosure maintenance and/or corrective actions.

(f) An operator shall not combine a performance bond or a performance local government guarantee with any other mechanism(s) for closure, for postclosure maintenance, or for corrective action.

(k) A government agency may provide a local government guarantee for a disposal facility of another government agency or private company.

NOTE: Authority cited: Sections 40502, 43040, and 43601.5, Public Resources Code. References: Sections 43040, 43103, 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.

§22233. CIWMB - Record Keeping and Reporting.

(b)

(11) Local Government Financial Test. An operator using a local government financial test shall maintain a copy of the information specified in §22249.

(12) Local Government Guarantee. An operator using a guarantee shall maintain documentation of the guarantor's qualifications for providing a guarantee under §22249 and §22249.5.

NOTE: Authority cited: Sections 40502, 43040, and 43601.5, Public Resources Code. References: Sections 43040, 43103, 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.

ARTICLE 2. CIWMB - FINANCIAL ASSURANCE MECHANISMS

§22249. ~~[Reserved by CIWMB.]~~ CIWMB - Local Government Financial Test. (new)

(a) To pass the local government financial test, and to demonstrate financial responsibility for postclosure maintenance and/or corrective action costs, an operator or a guarantor shall be a local government agency and shall meet the criteria of sections (e), (f), (i) and (j) based on financial statements prepared in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(b) A local government is not eligible to assure its obligations under section 22249 if it:

(1) Is currently in default on any outstanding general obligation bonds, or

(2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's, or

(3) Has operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years, or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant auditing its financial statement as required by section (a).

(c) The phrase "current postclosure maintenance cost estimates covered by the test" refers to the current postclosure maintenance cost estimate required by section (j)(1) to be shown in paragraphs 1 and 2 of the letter from the chief financial officer.

(d) The phrase "current corrective action cost estimates covered by the test" refers to the current corrective action cost estimate required by section (j)(1) to be shown in paragraphs 1 and 2 of the letter from the chief financial officer.

(e) The total amount of postclosure maintenance costs and corrective action costs which can be assured under this local government financial test is determined as follows:

(1) If the local government operator or guarantor does not assure other environmental obligations through a financial test, it may assure postclosure maintenance costs and/or corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(2) If the local government operator or guarantor assures other environmental obligations through a financial test, including but not limited to those associated with underground injection control wells, petroleum underground storage tank facilities, PCB storage facilities, and hazardous waste treatment, storage, and disposal facilities, it must add those costs to the postclosure maintenance costs and/or corrective action costs it seeks to assure. The total that may be assured must not exceed 43 percent of the local government's or guarantor's total annual revenue.

(3) The operator or guarantor must obtain an alternate financial assurance instrument for those costs that exceed the limits set in (1) and (2).

(f) The operator or guarantor shall meet the criteria of either section (g) or (h) based on the operator's or guarantor's most recent audited annual financial statements prepared in conformity with Generally Accepted Accounting Principles for governments.

(g) The operator or guarantor shall satisfy each of the following financial ratios based on the operator's or guarantor's most recent audited annual financial statements prepared in conformity with Generally Accepted Accounting Principles for governments:

(1) Liquidity ratio: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(2) Debt service ratio: a ratio of annual debt service to total expenditures less than or equal to 0.20; or

(h) An operator or guarantor with outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee must have such bonds with current investment grade rating as follows:

(1) Aaa, Aa, A or Baa, as issued by Moody's on all such general obligation bonds; or

(2) AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds.

(i) The operator or guarantor shall provide public notice of the local government's assured obligations by placing a reference to the postclosure maintenance costs and/or corrective action costs assured through the financial test into its next comprehensive annual financial report (CAFR). If timing does not permit the reference to be incorporated into the most recently issued CAFR or budget prior to the first year the financial test is used to assure local government solid waste facility obligations, the reference may instead be placed in the operating record until issuance of the next available CAFR. The operator shall certify that the reference to the postclosure maintenance costs and/or corrective action costs assured through the financial test is provided. The operator's certification shall be submitted with the chief financial officer letter as specified in section (j)(2).

(1) For postclosure maintenance costs, conformance with Government Accounting Standards Board (GASB) Statement 18 assures compliance with this public notice requirement.

(2) The following, including the GASB requirements, shall be disclosed:

(A) The nature and source of requirements for those obligations assured by the local government financial test including postclosure maintenance costs and/or corrective action costs; and

(B) Postclosure maintenance costs recognized at the balance sheet date; and

(C) Estimated postclosure maintenance costs remaining to be recognized; and

(D) Percentage of landfill capacity used to date, as of the end of the latest completed fiscal year; and

(E) Remaining landfill capacity reported in cubic yards or tons as of the end of the latest completed fiscal year; and

(F) Estimated remaining useful landfill life in years; and

(G) Corrective action costs. The reference shall be placed in the CAFR not later than 120 days after the corrective action remedy has been selected as required under Article 1, Subchapter 3, Chapter 3 (section 20380 et seq.).

(j) Within 180 days after the close of each financial reporting year, the operator or guarantor shall submit the following items to the CIWMB and, in the case of a guarantor also, to the operator;

(1) A letter on the local government's letterhead stationary that is worded and completed as specified in Form CIWMB 112 ~~(6/97)~~ (7/98), which is incorporated by reference, which contains an original signature of the local government's chief financial officer. An operator or guarantor shall use Form CIWMB 112 ~~(6/97)~~ (7/98) to demonstrate or guarantee financial responsibility for postclosure maintenance costs and/or corrective action costs.

(A) If the operator or guarantor is using a similar financial test to demonstrate postclosure maintenance costs and/or corrective action costs for other environmental obligations including but not limited to those associated with underground injection control wells, petroleum underground storage tank facilities, PCB storage facilities, and hazardous waste treatment, storage, and disposal facilities, the operator or guarantor shall list those facilities, as well as the solid waste facility obligations it seeks to assure.

(2) A letter from the local government's treasurer or auditor-controller certifying the relative size (43%) threshold as specified in section (e), and the public notice requirement as specified in section (i) have been satisfied.

(3) A copy of an independent certified public accountant's report on examination of the operator's or guarantor's financial statements for the latest completed fiscal year, with a copy of the operator's or guarantor's financial statements for the latest completed fiscal year.

(A) An unqualified opinion of the independent certified public accountant is required.

(B) Local governments that have audits conducted only once every two years due to state law, may use the latest annual statement, audited or unaudited, provided that the most recent audit resulted in an unqualified opinion from the auditor.

(4) A letter from an independent certified public accountant that performed the audit stating that:

(A) Stating that He or she has reviewed the letter required by section (j)(1) from the chief financial officer including data derived from the financial statements for the latest completed fiscal year of the operator or the guarantor, and compared the data with the amounts in the financial statements; and

(B) Based on the comparison, no matters came to his or her attention that caused him or her to believe that the specified data should be adjusted. Describing the procedures performed and related findings, including whether or not there were discrepancies found in the comparison, based on an agreed-upon procedures engagement performed in accordance with American Institute of Certified Public Accountants, Inc.'s (AICPA's) Statement on Auditing Standards No. 75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts or Items of a Financial Statement.

(5) A copy of the comprehensive annual financial report (CAFR) used to comply with section (i) or certification by the local government's treasurer or auditor-controller that the requirements of General Accounting Standards Board Statement 18 have been met.

(6) A copy of the bond rating on the bond rating service's letterhead stationery.

(k) The CIWMB may require updated financial statements at any time from the operator or guarantor. If the CIWMB finds that the operator or guarantor no longer meets the local government financial test requirements of sections (g) or (h), the operator shall obtain alternate coverage within 60 days after receiving the notification of such a finding.

(l) If, when preparing its annual update, an operator using the local government financial test fails to meet the requirements of the financial test under sections (g) or (h), the operator shall obtain alternate coverage within 210 days after the close of the financial reporting year.

(m) If the operator fails to obtain alternate coverage within the times specified in sections (k) or (l), the operator shall notify the CIWMB by certified mail within 10 business days of such failure.

(n) A local government financial test may be combined with another payment mechanism to assure the amount of required coverage specified in sections 22211 and 22221 of Subchapter 2.

NOTE: Authority cited: Sections 40502 and 43601.5, Public Resources Code. References: Sections 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.

22249.5. CIWMB - Local Government Guarantee. (new)

(a) The guarantor shall be a local government which meets the requirements of the Local Government Financial Test under section 22249 of this Article based on the guarantor's audited year-end financial statements.

(b) The guarantee shall be worded and completed as specified by form CIWMB 113-~~(6/97)~~ (7/98), which is incorporated by reference.

(c) When the guarantee specifies coverage for postclosure maintenance costs, the terms shall also specify:

(1) If the operator fails to perform postclosure maintenance in accordance with the applicable approved postclosure maintenance plan when required to do so, the guarantor shall either:

(A) Perform, or pay a third party to perform, postclosure maintenance in accordance with the applicable approved postclosure maintenance plan; or

(B) Establish and fund a trust fund as specified in section 22240 of this Article, in the name of the operator in the amount of the applicable current postclosure maintenance cost estimate covered by the guarantee; and/or

(d) When the guarantee specifies coverage for corrective action costs, the terms shall also specify:

(1) If the operator fails to perform corrective action in accordance with the applicable approved corrective action plan when required to do so, the guarantor shall either:

(A) Perform, or pay a third party to perform, corrective action in accordance with the applicable approved corrective action plan; or

(B) Establish and fund a trust fund as specified in section 22240 of this Article, in the name of the operator in the amount of the applicable current corrective action cost estimate covered by the guarantee; and/or

(e) The guarantee will remain in force unless the guarantor fails to meet the requirements of sections 22249 and/or 22249.5 of

this Article, or wishes to terminate the guarantee. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the operator and the CIWMB, as evidenced by return receipts.

(1) The guarantor shall send a notice of cancellation by certified mail to the operator, and the CIWMB, within 180 days after the end of that financial reporting year. The guarantee shall terminate no less than 120 days after the date that the operator and the CIWMB received the notice of cancellation, as evidenced by the return receipts.

(2) If the guarantee is cancelled, the operator shall establish alternate assurance as specified in section 22228 of Article 1 of this Subchapter within 60 days after such notice.

(3) If the operator fails to provide alternate financial assurance:

(A) The operator shall send notice of such failure by certified mail to the guarantor, and the CIWMB, within the same 60 day period; and

(B) The guarantor must provide alternate assurance as specified in section 22228 of Article 1 of this Subchapter within 60 days after the date of the operator's notice.

(f) The CIWMB may require updated financial statements at any time from a guarantor. If the CIWMB finds that the guarantor no longer meets the local government financial test or guarantee requirements of sections 22249 and/or 22249.5 of this Article, the CIWMB shall notify the guarantor and operator of such finding by certified mail. If the CIWMB notifies the guarantor and the operator that the guarantee is no longer acceptable, the operator and guarantor shall comply with section 22249.5 (e) (2) and (3) of this Article.

(g) Only a guarantee for payment, rather than performance of work, may be combined with another payment mechanism to assure the amount of required coverage specified in sections 22206, 22211, 22216, and/or 22221 of Subchapter 2.

NOTE: Authority cited: Sections 40502 and 43601.5, Public Resources Code. References: Sections 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.

